

**Medic Ambulance Service, Inc. and Thomas King.**  
Case 26-CA-8256

April 16, 1981

**DECISION AND ORDER**

On December 10, 1980, Administrative Law Judge J. Pargen Robertson issued the attached Decision in this proceeding. Thereafter, the General Counsel and the Respondent filed exceptions and supporting briefs.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings,<sup>1</sup> and conclusions<sup>2</sup> of the Administrative Law Judge and to adopt his recommended Order, as modified herein.

**AMENDED CONCLUSIONS OF LAW**

Insert the following as Conclusion of Law 3 and renumber the subsequent paragraph accordingly:

"3. Respondent, by threatening employees with discharge if they engaged in protected concerted activity, committed an unfair labor practice within the meaning of Section 8(a)(1) of the Act."

**ORDER**

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge, as modified below, and hereby orders that the Respondent, Medic Ambulance Service, Inc., Shelby County, Tennessee, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order, as so modified:

<sup>1</sup> The General Counsel has excepted to certain credibility findings made by the Administrative Law Judge. It is the Board's established policy not to overrule an administrative law judge's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. *Standard Dry Wall Products, Inc.*, 91 NLRB 544 (1950), *enfd.* 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing his findings.

<sup>2</sup> The Administrative Law Judge found that the Respondent threatened its employees with discharge if they engaged in protected concerted activity. However, he did not find a violation of Sec. 8(a)(1) because the Respondent did not follow through on the threat. We find that the Respondent's statement was a threat in violation of Sec. 8(a)(1) of the Act. An unlawful threat is not rendered lawful by a respondent's failure to carry it through. See *Acker Industries, Inc.*, 184 NLRB 472, 485 (1970). The Administrative Law Judge also found, at fn. 21, that the record does not support the Respondent's contention that Hoskins' testimony, concerning Currie's conversation with Morris, is not binding on it. The Administrative Law Judge did state, in response to the Respondent's objection, that "I will permit it with your [General Counsel's] statement that it would not be binding upon the Respondent." However, the Administrative Law Judge correctly found that the testimony was not hearsay. Additionally, he found that Hoskins' testimony was, in effect, corroborated by Woolbright, the Respondent's witness. Accordingly, we find that the Administrative Law Judge committed no reversible error in crediting and relying upon Hoskins' testimony.

1. Insert the following as paragraph 1(b) and re-letter the subsequent paragraph accordingly:

"(b) Threatening employees with discharge if they engaged in protected concerted activity."

2. Substitute the attached notice for that of the Administrative Law Judge.

**APPENDIX**

**NOTICE TO EMPLOYEES**  
**POSTED BY ORDER OF THE**  
**NATIONAL LABOR RELATIONS BOARD**  
An Agency of the United States Government

WE WILL NOT discharge, and thereafter refuse to reinstate, our employees because they engage in concerted activities protected by the National Labor Relations Act.

WE WILL NOT threaten our employees with discharge for engaging in protected concerted activities.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the National Labor Relations Act.

WE WILL offer full and immediate reinstatement to David Currie to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or other rights and privileges.

WE WILL make David Currie whole for any loss of earnings he may have suffered by reason of our discrimination against him, with interest.

**MEDIC AMBULANCE SERVICE, INC.**

**DECISION**

**STATEMENT OF THE CASE**

J. PARGEN ROBERTSON, Administrative Law Judge: This case was heard on July 14, 15, and 16, 1980, in Memphis, Tennessee. The charge was filed on January 31, 1980, and amended on March 24, 1980. The complaint, which issued on March 24, 1980, alleges that Respondent violated Section 8(a)(1) of the Act by discharging employee Thomas King on January 8, 1980, and by discharging employees James Freshour, Martha Freshour, Larry Hoskins, Debbie Hoskins, and David Currie on January 25, 1980.

Upon the entire record,<sup>1</sup> my observation of the witnesses and after due consideration of the briefs filed by the General Counsel and Respondent, and a letter of po-

<sup>1</sup> Counsel for the General Counsel filed a post-hearing motion to correct the transcript. That motion appears to be well taken and is hereby granted.

sition filed by counsel for the Charging Party, I hereby make the following:

#### FINDINGS<sup>2</sup>

This case involves allegations that Respondent discharged six employees because of the employees' concerted activities. The allegations regarding the discharge of the Charging Party, Thomas King, involved an apparently isolated event—King's January 8 discharge. However, the allegations regarding the other five alleged discriminatees originated in events involving all five which occurred on January 25, 1980.

##### *A. Thomas King*

King was employed by Respondent from October 1979 to January 8, 1980, as chief mechanic.<sup>3</sup> King's duties included receiving complaints from employees regarding the mechanical condition of their ambulances.

The General Counsel contends that King was discharged because of his activities in support of employee complaints regarding unsafe conditions of the ambulances. King testified that he was instructed by Respondent's president, John Woolbright, not to make numerous repairs on ambulances despite employee complaints which indicated that the repairs were needed. King testified as to some mechanical problems which he believed resulted in unsafe operation of the ambulances. Nevertheless, on occasion, according to King, Woolbright overruled King and kept unsafe ambulances in service.

According to King, he asked John Woolbright for meetings to discuss the problems regarding unsafe ambulances, but those meetings were never held.

King's impressions of the events during his employment with Respondent are strongly disputed by Respondent's witnesses, both supervisors and employees. Their testimony is to the effect that rather than complaining about unremedied, unsafe conditions, King actually engaged in continuous harassment of the ambulance drivers. The testimony was to the effect that King would continuously scold drivers on the assertion that the me-

chanical problems with the ambulances were due to improper operation by the drivers. King, on several occasions, allegedly followed ambulances and complained to the drivers that they were not operating the units properly, and that they were engaged in improper practices such as riding the brakes, which resulted in unwarranted mechanical problems.

I was not impressed with King's testimony. He gave confused and often conflicting testimony under cross-examination, especially in regard to his purchase of parts and to employee complaints about their ambulances. I find that I am unable to credit King to the extent that his testimony conflicts with other evidence. Therefore, the evidence does not support the General Counsel's contention that King engaged in protected concerted activity.

Moreover, the facts surrounding King's discharge convinced me that incidents on January 8 formed the sole basis for King's discharge.

On January 8, King was involved in mechanical work on an ambulance. Simultaneously, in Respondent's garage, Mike Woolbright<sup>4</sup> was working on his private vehicle, a van. Shortly after King returned from his meal break,<sup>5</sup> King requested the air hose from Mike Woolbright. Woolbright refused, indicating he would finish with the air hose shortly. With that, King threw down an air wrench he was holding and walked back into his living quarters. The incident was observed by John Woolbright and employee James White.

John Woolbright did nothing for some 20 to 30 minutes. Then, according to the testimony of James White, which I credit, John Woolbright went to King's apartment. When Woolbright opened the apartment door, White overheard King cursing. White testified that King did not appear to be cursing anyone in particular. Woolbright asked King, "Tommy, what seems to be the problem?" King replied, "I'm not going out there as long as Mike is out there." Woolbright said, "Well, if you want the air hose, I can get you the air hose." White testified that King replied, "Shit on it." At that point Woolbright said, "If you're going to take that kind of attitude, you're going to have to find another job."

I am convinced on the basis of the above testimony, and on the basis of corroborating evidence in the record, that King's discharge was the direct and spontaneous result of the January 8 incident. The evidence reflects nothing in that incident which involved protected rights. Therefore, I find that Respondent did not violate the Act by discharging Thomas King.

##### *B. The Other Discharge Allegations*

Respondent maintains several ambulance crews for the purpose of operating units in Memphis and Shelby County, Tennessee. Each crew consists of two employees, a driver and an emergency medical technician (EMT) or paramedic. On January 25, 1980, those crews included, among others: (1) A crew stationed at Bartlett, Shelby County, Tennessee (That crew was the husband

<sup>2</sup> Although Respondent denied the conclusionary allegation in the complaint that it is and has been at all times material herein an employer engaged in commerce, Respondent admitted all the factual commerce allegations. In view of its admission, I find that annually Respondent, in the course and conduct of its business operations, at Shelby County, Tennessee, where it is engaged in the operation of an ambulance service, provides services valued in excess of \$50,000 for Shelby County and other enterprises within the State of Tennessee, each of which annually purchases and receives products, goods, and materials valued in excess of \$50,000 directly from points located outside the State of Tennessee. Unrebutted evidence received during the hearing indicated that Respondent has contracts with the Baptist Hospital, Methodist Hospital, St. Jude Hospital, Memphis-Arlington Hospital, Memphis Police Department, and Shelby County. However, no one in the Shelby County government has authority to hire or fire any of Respondent's employees, and Respondent maintains exclusive control of labor relations matters for its employees, including directing their work, issuing discipline, and setting wages and benefits. On the basis of Respondent's admissions and the record evidence, I find that at all times material herein Respondent was an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

<sup>3</sup> Although King was the chief mechanic, the evidence demonstrates that he was the only mechanic. He received help in his work on occasion from various supervisors. There was no probative evidence that King held a supervisory position over any employee.

<sup>4</sup> Mike Woolbright, the son of Respondent's president, John Woolbright, was, at material times, a supervisor of Respondent.

<sup>5</sup> King lived in an apartment in the garage facility.

and wife team of James and Martha Freshour.);<sup>6</sup> (2) a crew stationed at Germantown, Tennessee (that crew was also normally a husband and wife team, Larry and Debbie Hoskins. However, Debbie Hoskins, who is the daughter of James and Martha Freshour, was off duty during January 1980 because of an injury.); and (3) a crew stationed at Collierville, Shelby County, Tennessee (that crew included David Currie and Joe Jensen).

By January 25 a problem had arisen over Debbie Hoskins' workmen's compensation claim. Debbie Hoskins had fractured her foot while working during December 1979. However, none of her workmen's compensation claims had been satisfied by January 25.

At some point in time, during the afternoon of January 25, 1980, a decision was made by employees to seek a meeting with Respondent's president, John Woolbright.

At 6 p.m. on January 25, 1980, Larry Hoskins went off duty. Since his wife, Debbie, was injured, she was also off duty. Neither Martha nor James Freshour was on duty after 6 p.m. on January 25.

When Larry Hoskins arrived at his Germantown station, which also served as living quarters for him and his wife Debbie, the Collierville crew of David Currie and Joe Jensen was there at the station.<sup>7</sup>

Larry Hoskins telephoned James and Martha Freshour and invited them to meet them at the Germantown station. Hoskins told the Freshours that he was going to call John Woolbright to meet and discuss with them Debbie Hoskins' workmen's compensation claim.

Hoskins tried to contact John Woolbright but was unsuccessful.

Laverne Sweden, direct supervisor over the ambulance crews, was telephoned by Hoskins around 6 p.m. Sweden testified that Larry Hoskins told him that he wanted to have a meeting with John Woolbright to "talk about more money, the workmen's comp. and about hauling transfers and d.o.a.'s."<sup>8</sup> According to Sweden, Hoskins went on to say, "We want to talk to him (Woolbright) about that before we park the ambulances."

Sweden then telephoned John Woolbright and informed Woolbright of his call from Larry Hoskins. Woolbright instructed Sweden that he could not attend the meeting at that time, but that Sweden should go over and see what the trouble was. According to Sweden, he informed Woolbright that the meeting included the crews from the east station (Bartlett), Germantown station, and Collierville station.

Debbie Hoskins testified that she was present at the Germantown station—her living quarters—on January 25. She testified that after her husband, Larry Hoskins, called Laverne Sweden, she overheard David Currie place a call to the Shelby County sheriff's department. Debbie Hoskins testified that she overheard Currie leave a message for Shelby County Mayor Morris to call him at the Hoskins' home.

<sup>6</sup> Martha Freshour (Martha Jane Freshour) is frequently referred to as Jane.

<sup>7</sup> Frequently, the Collierville crew operated out of the Germantown station. Currie and Jensen were on duty during the evening of January 25.

<sup>8</sup> Testimony indicated that the term "transfers" refers to the transporting by ambulance on a nonemergency basis.

According to Debbie Hoskins' testimony, the Shelby County mayor called Currie a few minutes later. Debbie Hoskins testified that she went into the bedroom and listened to the conversation between the Shelby County mayor and David Currie on an extension phone. She testified that Currie started telling the mayor about the living conditions under which they had to work; and before Currie had a chance to say anything else, Mayor Morris told him that if that was all they wanted to talk about, that he should call the mayor back Monday morning. At that point, according to Debbie Hoskins, Currie asked Mayor Morris if he knew that all his ambulances were in the city (Memphis) running transfers that day. Mayor Morris asked Currie to repeat that again. After Currie repeated this statement, Mayor Morris asked for John Woolbright's phone number.

John Woolbright testified that he received a call from Mayor Morris of Shelby County during the evening of January 25.<sup>9</sup> According to Woolbright, Mayor Morris asked him if he had any ambulances in the county. Woolbright replied that he did, at which point Mayor Morris said, "I hear you're having problems in the county; that your people are going to park their ambulances, and I've been without ambulances three to four hours in the county." Woolbright testified that he replied, "Mayor, you've got ambulances all over the county and all over the city. These people that's doing the talking are off duty. They weren't even working at the time."

John Woolbright testified that he phoned the Germantown station.<sup>10</sup> Woolbright testified that he first talked to employee Joe Jensen and then to employee David Currie. Woolbright testified that Currie told him that they wanted to meet with him and discuss pay, transfers, and workmen's compensation. After talking to Currie, Woolbright testified that he asked to speak to James Freshour. However, Freshour was not available.<sup>11</sup> According to Woolbright's testimony, when he talked with Martha Freshour, he asked her, "What is the problem?" Woolbright testified that Martha Freshour testified that she did not have a problem. Woolbright testified that he also asked her, "Have you heard of anybody that's going to park an ambulance?" Martha Freshour indicated that she had not heard of anybody parking an ambulance. According to Woolbright, he then stated, "Well, if anyone parks the ambulance, they can find them another job." Woolbright testified that that was all that was said and that Martha Freshour hung up.

Martha Freshour also testified concerning the phone conversation she had with John Woolbright. According

<sup>9</sup> As indicated above, Respondent has a contract to maintain ambulance service for Shelby County.

<sup>10</sup> The testimony is confused as to the order in which these various phone conversations occurred. I do not intend to indicate by the order in which I have arranged the conversations in my findings herein, a determination that the conversations occurred in any particular order. In fact, the evidence is such that I have determined that it is not possible to make such a finding. However, I do not view such a determination to be of significant importance in resolving the issues presented herein.

<sup>11</sup> When James and Martha Freshour arrived at the Germantown station, James Freshour walked over to the fire station while Martha Freshour went into the Germantown station. Therefore, James Freshour was not in the station when Woolbright called.

to Martha Freshour's testimony, when she picked up the phone, John Woolbright immediately said, "I think that all of you had better find yourself another job, look for another job." Mrs. Freshour testified that she said, "I don't know what you're talking about, Johnny." She testified that Woolbright said that he did not appreciate getting a call from County Mayor Morris. Mrs. Freshour said that she told Mr. Woolbright that she still did not know what he was talking about. Woolbright then said he had gotten a call from Mayor Morris making some remarks about the ambulance coverage in the county, and something about Debbie's claim.

Mrs. Freshour testified that she told Woolbright that she was sorry, but she still did not know what he was talking about. At that point Woolbright told Mrs. Freshour that Laverne Sweden had told him that they had threatened to park the ambulances and refuse to work. Martha Freshour testified that she told Woolbright that she did not see how that could happen since they had been off duty since the day before and did not have any ambulances to park.

Mrs. Freshour testified that Woolbright then said, "I guess you know you're going to be going downtown and have to sign all these accusations that you've made." Mrs. Freshour testified that she then said, "I'm sorry, I don't know what you're talking about." Woolbright then said, "Well, if you don't know anything about it, evidently it was the Germantown crew that's causing the problem." Mrs. Freshour testified that she then said to Woolbright that she was sorry, that she did not know what he meant. She then went on to tell him, "But if that is the way you feel about it, I guess we will look for another job. I'll have Jim call you when he gets back." Mrs. Freshour testified that that ended the phone conversation.

James Freshour testified that he came into the Germantown station after his wife Martha had talked to John Woolbright. According to Mr. Freshour, he then placed a call to John Woolbright.<sup>12</sup> According to Mr. Freshour, John Woolbright asked him what in the world was going on out there; who called the mayor? Woolbright told Mr. Freshour that he did not appreciate getting a call from the mayor. Mr. Freshour testified that he told Woolbright that he was not aware that anyone had called the mayor. Freshour asked Woolbright if he was fired. According to Freshour, Woolbright replied, "Well, if you don't like what's going on, all of you can hit the road. All of you can go find another job."

Freshour testified that he went on to ask Woolbright about the working conditions and why they did not receive the same compensation that all the other county stations did—furnished houses, utilities, and things of that nature.<sup>13</sup> Freshour testified that Woolbright told him that that was the best he could do at the time, that he just did not have the money, and that "if I couldn't like that—if I didn't like that, I could just look for me another job."

<sup>12</sup> Woolbright, in his testimony, denied having a phone conversation with James Freshour on the evening of January 25.

<sup>13</sup> Most of the crews lived in quarters furnished to them free of charge. However, the Freshours lived in their own mobile home.

According to James Freshour's testimony, Laverne Sweden entered the Germantown station shortly after James Freshour's conversation with John Woolbright.

Laverne Sweden, whose testimony I credit,<sup>14</sup> testified that he arrived at the Germantown station about 7 or 7:30 p.m. Sweden testified that there were several employees present along with some other people. The employees included James Freshour and Larry and Debbie Hoskins. Sweden testified that after he got in, he asked Larry Hoskins what the trouble was. Hoskins told him that it was about more money, the transfers, the d.o.a.'s, and the workmen's compensation. Sweden said he told Hoskins that he could not do anything about more money because Woolbright said he could not afford to give any more money until after they got a particular contract, if they get it. Sweden said that he told the employees that as far as hauling transfers and d.o.a.'s, it goes along with the ambulance work. Sweden commented that workmen's compensation was something he had never had to file on, but that he had always heard that it was slow about paying.

Sweden testified that he asked Larry Hoskins if he was going to take over the unit (ambulance) when their time came to go back to work. According to Sweden, Hoskins replied, "No, as far as I'm concerned the ambulance is parked."

Sweden testified that he then turned to (Martha) Jane and Jim Freshour and asked if they would take over their units. Sweden testified that "Jim and Jane told me that they would take over their unit, if Mr. Woolbright would pay the utility bills." Sweden testified that he told the Freshours that he could not give them an answer then, but he would go find out and get back in touch with them.

Joe Jensen testified that he and his partner, David Currie, returned to the Collierville station. After they reached the Collierville station John Woolbright called and Jensen answered the phone. Woolbright asked Jensen if he knew who had called the county mayor. Jensen told Woolbright to hold on, that he would need to talk to David Currie. Jensen then called Currie to the phone.<sup>15</sup>

John Woolbright admitted that prior to his later phone conversation with Jensen and David Currie while they were at the Collierville station, he had called Shelby County Mayor Morris again and told Mayor Morris that he (Woolbright) was having "labor problems."

<sup>14</sup> Laverne Sweden impressed me as a straightforward and candid witness. I noticed that he appeared to try to answer all questions, both from Respondent's counsel and from the other attorneys, in a straightforward manner. I also found his version of the events to be in accord with the logical probabilities when viewed in light of the other available evidence. Therefore, I have fully credited the testimony of Sweden.

<sup>15</sup> Early during the hearing herein counsel for Respondent questioned the inclusion of matters relating to David Currie in this proceeding on the assertion that Currie had stated to both Respondent and counsel for the General Counsel that he did not want to be a part of this proceeding. Following counsel for Respondent's comments, I ruled that it was the General Counsel's privilege to proceed in regard to Currie even if evidence should be presented indicating that David Currie did not want to proceed in this matter. David Currie was not called by either party and did not testify.

Woolbright agreed that he first talked to Jensen when he called the Collierville station. However, according to Woolbright's testimony, Jensen told him that Currie was the one who had made the phone calls to all the people.<sup>16</sup>

Woolbright testified that when David Currie got on the phone, Currie told him that he (Currie) was the one—before anybody else got into any trouble, he wanted to tell me that he was the one that had called (Mayor) Bill Morris. Woolbright testified that he then told Currie that he could just find another job. According to Woolbright, Currie replied, "Well, that's fine with me, I'm already packed."

Laverne Sweden testified that after he left the Germantown station, he talked with John Woolbright and that Woolbright agreed that he would pay the Freshours' utility bills.

Later that evening Sweden testified that he called James Freshour and told Freshour that Woolbright had agreed to pay their utility bills. According to Sweden, he asked Freshour if he was going to take over the ambulance when their next shift began. Sweden testified that Freshour told him that he would take over the shift.

However, Sweden testified that about 9 or 9:30 a.m. the following day James Freshour drove his ambulance over to Sweden's house. Freshour came to the front door, handed Sweden the keys and said, "I'm sorry, but you know how a woman is when she gets mad. She said we're not going to work for them any longer."

#### 1. The Freshours and the Hoskins

In order to support my finding a violation, it is necessary that I determine that the four involved employees engaged in protected activities for which they were discharged.

The evidence is conclusive that the employees were engaged in protected concerted activity. Even Respondent's supervisors admit that on January 25 the employees were seeking a meeting with management to discuss wages, "transfers," and workmen's compensation.

However, I have determined that the evidence fails to support the General Counsel's allegations that Respondent discharged the four employees. Even if I should credit the testimony of Martha Freshour, and I am unable to do that, I would not be convinced that her January 25 telephone conversation with John Woolbright involved her discharge. It appears from Mrs. Freshour's version of that conversation that although Woolbright started the conversation with the assertion that the employees could look for other jobs, his position was subsequently softened. At the end of the conversation, according to Mrs. Freshour's version, it was Mrs. Freshour, not Woolbright, who suggested the employees look for other work.

However, when considered in light of the other evidence, I am convinced that Mrs. Freshour's recollection of her January 25 phone conversation with Woolbright is erroneous. In that regard, I notice that the testimony of James Freshour concerning a phone conversation he al-

legedly had with Woolbright, after his wife's conversation with Woolbright, shows that Woolbright had not discharged the Freshours. Woolbright's alleged comment to James Freshour was, "Well, if you don't like what's going on, all of you can hit the road. All of you can go find another job." I do not interpret those comments to demonstrate that the Freshours had already been discharged.

James Freshour admitted that following his conversation with Woolbright, Supervisor Laverne Sweden told him that Respondent would agree to take care of their utility bills.

Additionally, both Martha and James Freshour's testimony is incompatible with that of Laverne Sweden.<sup>17</sup> Sweden's testimony that James Freshour returned their ambulance on Saturday, January 26, and indicated that Martha Freshour would not work for Respondent any longer, would be illogical if the Freshours thought they were fired on January 25.

Additionally, Martha Freshour's testimony is in direct conflict with that of Charlotte Jones. According to Jones, late in the evening of January 25, Martha Freshour told her that John Woolbright had agreed to pay their utility bills, but that Woolbright "waited too damn late because they quit." Martha Freshour admitted talking to Charlotte Jones and admitted that Respondent had agreed to pay Freshours' utility bills before her conversation with Jones. However, she denied telling Jones that they had quit.

Under the circumstances, I have determined that the credited testimony does not reflect that Respondent discharged Martha and James Freshour and Larry and Debbie Hoskins on the evening of January 25.

The evidence does show that on January 25, John Woolbright threatened to discharge any employee that parked an ambulance. Under the circumstances, that statement could easily be construed to constitute a threat to discharge employees because of the employees' concerted activities. However, as to the Freshours and Hoskins, the probative evidence fails to show that Woolbright followed through on his threat.

Therefore, I find that the evidence failed to prove that employees Martha and James Freshour and Larry and Debbie Hoskins were discharged by Respondent.

#### 2. David Currie

There is no factual dispute concerning Currie's discharge. Currie participated in the meeting at the Germantown station with the Hoskins and the Freshours.

<sup>17</sup> As indicated above, I fully credit Sweden's testimony. His testimony demonstrates that the Freshours resigned when Mr. Freshour returned their ambulance to Sweden on January 26. In view of my determination that Mrs. Freshour's version of her January 25 phone conversation with John Woolbright cannot be credited, I find that the record contains no probative evidence demonstrating that Respondent discharged either the Freshours or Larry and Debbie Hoskins. The only evidence offered to support the discharge of the Hoskins was Mrs. Freshour's testimony regarding her phone conversation with Woolbright. Even if I should find that Hoskins, by telling Sweden that "the ambulance is parked," was engaging in an economic strike, I would find no violation. There is no evidence demonstrating that Hoskins was engaged in a strike. Moreover, the evidence fails to show that Hoskins was ever discharged whether because of his striking or otherwise.

<sup>16</sup> Woolbright testified that he received phone calls from various officials in addition to Mayor Morris.

Currie was the first employee who told John Woolbright why the employees wanted to meet. According to Woolbright, Currie told him "we want to talk to you about more money, workmen's compensation and about not making transfers." Also, it was Currie that called the county mayor.

John Woolbright testified that he was subsequently phoned by the county mayor. According to Woolbright, Mayor Morris called and asked, "Woolbright, do I have any ambulances in the county?" Woolbright informed the mayor that he did have ambulances. Mayor Morris stated, "I hear you're having problems in the county; that your people are going to park their ambulances, and I've been without ambulances three or four hours in the county." Woolbright replied, "Mayor, you've got ambulances all over the county and all over the city. Those people that's doing the talking are off duty. They weren't even working at the time." Mayor Morris: "Well, how about you getting out there and see?" Woolbright: "I've got a supervisor on the way out there right now." Mayor Morris: "Well, how about you getting out there and checking on it yourself, because if you don't have any ambulances out there, I'm going to contract with the Memphis Fire Department and get ambulances out there . . . Here's my telephone number. I want you to call me back as soon as you get out there and find out what's going on."

Woolbright testified that he subsequently called the Collierville station and spoke to first Jensen then Currie. Woolbright testified that when Currie got on the phone, Currie said, "I want to tell you before I get anybody else in trouble. I was the one that made the telephone calls."<sup>18</sup>

Woolbright testified, "So, I fired [Currie], but he was already packing even before I fired him Jensen said."<sup>19</sup>

The evidence therefore reflects, and I find, that David Currie was discharged on January 25 because of his involvement in concerted activities with employees James Freshour, Martha Freshour, and Larry and Debbie Hoskins, and especially because of his phone call in furtherance of those activities to County Mayor Morris.

In regard to that phone call, the evidence clearly demonstrates that the call involved Currie's efforts to advise a customer of Respondent of the employees' labor difficulties with Respondent. In fact, John Woolbright admitted that Mayor Morris had advised him that that was what Morris had been told. The Board has continuously held that similar actions by employees are protected.<sup>20</sup>

Here Respondent appears to argue that because of the nature of Currie's comments to Mayor Morris, Currie loses the protection of the Act. In that regard, I find only one comment by Currie to be bothersome. Accord-

ing to the testimony of Debbie Hoskins,<sup>21</sup> Currie asked Mayor Morris "if he knew that all his ambulances was in the city running transfers that day." Debbie Hoskins' testimony is corroborated by John Woolbright's version of his conversation with Mayor Morris. According to Woolbright, Mayor Morris asked him if he "had any ambulances in the county." The mayor also said, "I hear you're having problems in the county; that your people are going to park their ambulances, and I've been without ambulances three to four hours in the county." However, in consideration of whether Currie's comments to Mayor Morris deprive him of the Act's protection, I note from the testimony of John Woolbright that Currie's statements to Mayor Morris could have been correct. Woolbright testified that when his ambulances were making transfers, they could be pulled off in order to take care of emergencies. However, he admitted that it could have happened that they had no ambulances in the county outside of the city, at some particular time. In fact, Woolbright admitted that that is an occasion which occurs every day. Therefore, I find no basis to determine that David Currie lost protection of the Act by the nature of his statements to Mayor Morris. I find that by discharging David Currie on January 25, 1980, Respondent violated Section 8(a)(1) of the Act.

#### CONCLUSIONS OF LAW

1. Medic Ambulance Service, Inc., is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. Respondent, by discharging its employee David Currie on January 25, 1980, because of its employees' protected concerted activities, has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

3. Respondent did not engage in unfair labor practices in violation of Section 8(a)(1) of the Act by discharging its employees Thomas King, James Freshour, Martha Freshour, Larry Hoskins, and Debbie Hoskins.

The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

#### THE REMEDY

Having found that Respondent has engaged in unfair labor practices, I shall recommend that it be ordered to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act.

As I have found that Respondent unlawfully discharged David Currie, I shall recommend that Respondent be ordered to offer him immediate and full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position,<sup>22</sup> without prejudice to his seniority or other rights and privileges previously

<sup>18</sup> In subsequent testimony, Woolbright testified that Currie's statement was that he was the one who had called Mayor Morris.

<sup>19</sup> In this regard, I credit the testimony of Jensen over that of John Woolbright. Jensen, who appeared to be impartial and had nothing to gain or lose from this proceeding, appeared to testify candidly. In this regard, Jensen testified that it was not until subsequent to Currie's discharge by Woolbright that he, Jensen, told Woolbright that Currie had been packing even before Woolbright had fired him.

<sup>20</sup> *Richboro Community Mental Health Council, Inc.*, 242 NLRB 1267 (1979); *Community Hospital of Roanoke Valley, Inc.*, 220 NLRB 217 (1975); *Golden Day Schools, Inc.*, 236 NLRB 1292 (1978).

<sup>21</sup> Respondent, in its brief, argues that Debbie Hoskins' testimony is not binding on Respondent. I find no support for that position in the record. Debbie Hoskins testified without rebuttal that she overheard the conversation between Currie and Mayor Morris on an extension phone. Therefore, her testimony does not involve hearsay and is hereby credited.

<sup>22</sup> Evidence in the record indicated that David Currie has now been

enjoyed. I shall further recommend that Respondent be ordered to make David Currie whole for any loss of earnings he may have suffered as a result of the discrimination against him. Backpay shall be computed with interest as described in *F. W. Woolworth Company*, 90 NLRB 289 (1950), and *Florida Steel Corporation*, 231 NLRB 651 (1977).<sup>23</sup>

Upon the foregoing findings of fact, conclusions of law, and the entire record, and pursuant to Section 10(c) of the Act, I hereby issue the following recommended:

#### ORDER<sup>24</sup>

The Respondent, Medic Ambulance Service, Inc., its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Discharging and thereafter failing and refusing to reinstate its employees because of their concerted activities.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of their rights to engage in protected concerted activities.

reemployed by Respondent. However, the evidence does not reflect whether he was reemployed at a substantially equivalent position.

<sup>23</sup> See, generally, *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962).

<sup>24</sup> In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

2. Take the following affirmative action designed and found necessary in order to effectuate the policies of the Act:

(a) Offer David Currie immediate and full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or other rights and privileges previously enjoyed, and make Currie whole for any loss of earnings he may have suffered as a result of the discrimination against him in the manner set forth in the section of this Decision entitled "The Remedy."

(b) Post at its facility in Shelby County, Tennessee, including its main office and all its stations, copies of the attached notice marked "Appendix."<sup>25</sup> Copies of said notice, on forms provided by the Regional Director for Region 26, after being duly signed by an authorized representative of Respondent, shall be posted by it immediately upon receipt thereof, and be maintained for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director for Region 26, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply herewith.

<sup>25</sup> In the event that Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."